UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

IRON MOUNTAIN INFORMATION MANAGEMENT, LLC,

Employer

and **Case 32-RD-186961**

LARRY C. FARNSWORTH,

Petitioner

and

TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Union.

DECISION AND ORDER

The Petitioner seeks a decertification election among bargaining unit employees at the Employer's Newark, California facility. The Union contends that the petition must be dismissed because there is a successor bar in place, while the Employer asserts that there is no successor bar in place because the requisite insulated time period has already passed.[1]

A hearing officer of the Board held a hearing in this matter. The parties orally argued their positions prior to the close of the hearing. Based on the record and relevant Board cases, including *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), I find, in agreement with the Union, that the petition was filed prior to the expiration of the minimum 6-month insulated period required by the successor bar doctrine. I am, therefore, dismissing the petition.

STATEMENT OF FACTS

Iron Mountain Information Management, LLC (the Employer) is engaged in the business of providing document shredding services to businesses and the general public. On May 2, 2016,[2] the Employer purchased a document shredding facility in Newark, California, from Recall

[1] The Union also alleged, in its Statement of Position, that the petition should be dismissed because the Petitioner is a statutory supervisor and/or an agent of the Employer. During the hearing, the Union requested to withdraw those allegations, and I approved that request. In its Statement of Position, the Union further argued that the proposed bargaining unit is not appropriate because the exclusions differed from the recognized, historical bargaining unit. At the hearing, the parties stipulated, in agreement with the Union's position, that the unit description should mirror the historical bargaining unit. Accordingly, the only remaining issue in this matter is whether the petition must be dismissed under a successor bar.

[2] All dates hereafter are in 2016.

Secure Destruction Services, Inc. (Recall). The Employer took over Recall's operations that same month and hired Recall's entire workforce.

The drivers and warehouse employees at Recall's Newark facility were represented by Teamsters Local 853, International Brotherhood of Teamsters (the Union). At the end of April 2016, the Employer's Director of Labor Relations, April Parker, telephoned the Union's business agent, Ray Torres, and told Torres that the Employer would recognize the Union when it took over the facility. During that same conversation, Parker also told Torres that the Employer would abide by all of the terms and conditions of employment of Recall and that the Employer would assume Recall's collective-bargaining agreement, effective by its terms from January 1, 2013 through June 30, 2016.

Article 22 of the collective-bargaining agreement covers employee health insurance benefits. Article 22 provides in relevant part:

> Except as expressly modified by this Agreement, it is expressly understood and agreed that benefit levels and conditions, insurance ca[rr]iers, premiums, employee contributions and other terms and conditions are subject to change from year to year in the Company's sole discretion. The Company reserves the sole and exclusive right, power and authority to decide all matters arising in connection with the administration of such plans. The Union and all employees will be notified in writing within thirty (30) calendar days of any material changes in the benefit plans.

On April 25, Parker left a voicemail for Torres notifying him that the Employer planned to make some changes to employee health benefits. On April 26, Parker emailed Torres a copy of the "communication that will be going out to the employees regarding Iron Mountain benefits." Parker's email stated, "With regard to the medical, please take a look at the attached document. I think you will find that our benefit plans offer more value than the Recall plans for the amount the employees pay." Parker closed the email by stating that she had some free time later in the week if Torres was able to meet.

On April 28, Torres and Parker met at Torres's office. No one else was present for that meeting. Torres testified that he and Parker used the meeting to get to know one another on a personal level, that they did not discuss potential changes to health and welfare benefits, and that they did not discuss the contract at all during that meeting. Parker did not testify because she was not present at the hearing.

On May 2, Parker sent an email to Torres indicating that several of the members were eager to switch over to the Employer's medical benefits plan. Parker stated that she hoped Torres would be willing to verify what she had been told about the members being anxious to switch plans and "waive the 30 day notification period sooner rather than later." On May 4, Torres responded with an email stating, "We will waive the 30 day notice for our members in Newark. Thank you for keeping me posted."

The Union and the Employer were scheduled to meet and begin their successor contract negotiations on May 25 and 26. However, those bargaining sessions were canceled by the Employer. No contract negotiations took place during those sessions. The first negotiations for a successor contract between the Union and the Employer took place on August 8 and 9.

On October 25, the Petitioner, employee Larry C. Farnsworth, filed the petition in this matter seeking a decertification election.

ANALYSIS

The Board's Successor Bar Doctrine

Under the Board's "successor bar" doctrine, when a successor employer recognizes the incumbent union of its employees, the incumbent union is granted a "reasonable period for bargaining" during which its majority status may not be challenged. If a representation petition is filed during that insulated period – whether by employees, the successor employer, or a rival union seeking to oust the incumbent – the petition will be dismissed.

As the Board established in its lead case on the successor bar doctrine, *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), the length of the successor bar varies under different circumstances. Where the successor employer has expressly adopted the existing terms and conditions of employment as the starting point for bargaining, without making unilateral changes, the "reasonable period of bargaining" is 6 months. *Id.* at 809. The 6-month period is measured from "the date of the first bargaining meeting" between the parties, and the 6-month period is intended as a bright-line rule. *Id.* In fixing the insulated period at 6 months in such circumstances, the Board reasoned that although successorship remains a destabilizing situation, the impact to the union and employees is mitigated because the new employer has accepted the collectively bargained status quo. *Id.* In a situation where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and conditions of employment before proceeding to bargain, the Board determined that the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. *Id.* In those situations, the Board applies a multifactor analysis, set forth in *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), to determine whether the reasonable period for bargaining has elapsed. *Id.*

Application of Board Law to the Facts of this Case

In this case, there is no dispute that the Employer is a successor employer who hired all of its predecessor's employees, recognized the Union, and agreed to abide by the terms of the collective-bargaining agreement. In such cases, the "reasonable period for bargaining" is the bright-line 6-month period established in *UGL-UNICCO*, above. None of the parties asserts that

the longer insulated period should apply in the circumstances presented here.[3] Rather, the source of the parties' disagreement is whether the reasonable period of bargaining has lapsed. Specifically, the Union and the Employer disagree about the date of their first bargaining meeting.

The Union contends that the insulated period in this case did not begin to run until August 9, when the parties first sat down to engage in successor contract negotiations. For its part, the Employer claims that its change to the health insurance plan was a change to the terms and condition of employment, that the Union and the Employer bargained over that change in late April, and that the Union ultimately agreed to a modification of the existing collective-bargaining agreement on May 4. The Employer claims that, therefore, the reasonable period for bargaining began to run in late April, and had already elapsed by the time the petition was filed.

However, I disagree with the Employer for the following reasons. First, the record does not establish that the Union and the Employer engaged in any bargaining over the change to health insurance, because there is no record evidence that there was any give and take or exchange of proposals between the Union and the Employer regarding the Employer's plan to offer its own medical benefits package to employees. Indeed, Parker's April 26 email to Torres, sending him "the communication that *will* be going out to employees regarding Iron Mountain benefits," suggests that the Employer's plan to change its medical benefits was not subject to negotiation. (Emphasis added.) The record demonstrates only that the Employer informed the Union of its plan to change its medical benefits, as it was privileged to do under Article 22 of the collective-bargaining agreement, and that the Employer merely asked the Union to waive the contractually-required 30 day notice period, which the Union agreed to do. I cannot agree with the Employer's characterization of this exchange as one that would qualify as a "first bargaining meeting" that would trigger the start of the reasonable period for bargaining under *UGL-UNICCO*. Rather, the Union and the Employer were simply performing their administerial obligations under the contract.

In any event, even if I were to adopt the Employer's point of view and conclude that the late April exchange between Torres and Parker qualified as an initial bargaining meeting, the petition would still fall within the insulated period because the record reflects that Torres and Parker did not meet until April 28. Accordingly, the petition, which was filed on October 25, fell within the bright-line 6-month insulated period whether the initial bargaining meeting is considered to be April 28 or August 8. Therefore, the petition must be dismissed. See, e.g., *Sabreliner Aviation, LLC*, 2015 WL 5564623 (September 21, 2015) (denying review of regional director's dismissal of decertification petition because the petition was filed prior to the expiration of the minimum 6-month insulated period, measured from the parties' first bargaining session after recognition).[4]

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[3] During the hearing, the Employer contended that *UGL-UNICCO* was wrongly decided and should be abandoned by the Board. I decline to address that issue, which can only be decided by the Board.

[4] For the above-detailed reasons, I hereby affirm my decision to deny the Employer's motion to postpone the hearing. The hearing in this matter was initially scheduled to commence

For the foregoing reasons, I conclude that the petition was filed before the reasonable period for bargaining had expired, and I shall dismiss the petition.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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on November 3. On November 2, the Employer made a written request to postpone the hearing, arguing that it needed additional time to investigate to investigate the Union's argument that the petition should be dismissed under *UGL-UNICCO, supra* and/or because an essential Employer witness, April Parker, was unavailable on the date of the hearing. On that same date, I issued a letter denying that motion. As a threshold matter, I note that the Employer's purported need to do additional legal research on the import of the Board's decision in *UGL-UNICO* does not constitute the requisite "special circumstances" to request a postponement as required under Section 102.63(a) and (b) of the Board's Rules and Regulations. However, the unavailability of Parker, a purported essential witness, could constitute such special circumstances. Accordingly, while I issued a letter on November 2 denying the postponement request, I allowed the Employer, at the start of the hearing, to renew that request. Thereafter, I deferred ruling on the motion until later in the hearing to develop the record evidence to allow me to determine whether Parker's testimony was essential. After the Employer had presented its last witness, I reconsidered the postponement request but determined again that it should be denied. In this regard, as noted above, the Employer's argument is essentially that the meeting between Torres and Parker on April 28 constituted the parties' first bargaining session. However, the undisputed evidence adduced at the hearing showed that the April 28th meeting was limited to a discussion of the Employer's intention to make some changes to the unit employees' health and welfare coverage once it took over the operations on May 2, which changes were authorized under the terms of the collective-bargaining agreement. Thereafter, the first bargaining session for a successor collective-bargaining agreement did not actually take place until August 8. On these undisputed facts, it is clear that the testimony of Parker regarding the April 28th meeting is not essential to resolve the instant matter. Accordingly, I hereby affirm my ruling to deny the Employer's postponement request and to decide this matter based solely on the instant record because the Employer makes no claim that if Parker had been called to testify, she would have testified that some actual substantive bargaining took place on April 28 regarding the terms of a successor collective-bargaining agreement. More importantly, even if I were to assume, arguendo, that there was some actual first-contract bargaining on April 28, since the petition in this matter was filed on October 25, this was three days before the expiration of six months from the date of this purported bargaining session. The Board established a bright line six month successor bar in *UGL-UNICO,* and I have no authority to deviate from that timeline. Finally, I note that the Employer could have, but did not, request for special permission to appeal to the Board my denial of its motion. Accordingly, for all of the above-reasons, I hereby affirm my decision to deny the Employer's motion for a postponement of the hearing.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[5]

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   > All full-time and regular part-time driver and warehouse employees employed by the Employer at its facility located at 6730 Redecker Pl., Newark, CA 94560; excluding all other employees, office clerical employees, professional employees, outside salespersons, guards and supervisors as defined in the Act.

5. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(b) and (7) of the Act.

ORDER

IT IS HEREBY ORDERED that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by December 6, 2016.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

[5] During the hearing the parties stipulated that the Employer, a Delaware corporation with an office and place of business in Newark, California, is engaged in the business of providing document shredding services; and that during the last 12 months, the Employer purchased and received goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of California.

Dated: November 22, 2016.

VALERIE HARDY-MAHONEY
ACTING REGIONAL DIRECTOR
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